



CHAPTER 9

KAYENTA TOWNSHIP LEASING ORDINANCE

SUBCHAPTER 1 BUSINESS SITE LEASING

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BUSINESS SITE LEASING

SECTION 9-101 Title

This chapter shall be cited as the "Kayenta Township: Chapter 9, Business Site Leasing Ordinance."

HISTORY

KTCO-027-98 (Oct. 16, 1998) Adopted the original Lease Ordinance with general provisions and business site lease provisions.
KTCD-046-98 (Dec. 20, 1998) Approved Amendment No. 1 to the Lease Ordinance.
KTCT-002-00 (Feb. 20, 2000)
KTCAU-34-06 (Aug. 14, 2006)
KTCT-03-08 (Feb. 12, 2008)

SECTION 9-102 Policy

It is the policy of the Kayenta Township that its leasing system accomplishes the following goals:

- A. To protect the land and resources by regulating the types of land use and limiting the adverse impacts;
- B. To protect and enhance the public health and welfare by establishing terms and conditions for land use activities, and by prescribing sanctions for violations of those terms and conditions;
- C. To generate revenues in the form of rents and fees; and
- D. To encourage development by instituting a streamlined leasing process and providing appropriate incentives and opportunities for individuals and businesses.

HISTORY

KTCO-027-98 (Oct. 16, 1998)
KTCAU-34-06 (Aug. 14, 2006)

SECTION 9-103 Authority

Pursuant to the Navajo Nation Council Resolutions CJA-3-96 (Jan. 19, 1996), CN-76-96 (Nov. 1, 1996), CJY-42-03 (July 25, 2003) and CAU-47-03 (Aug. 29, 2003), the Kayenta Township Commission has the general authority and responsibility to govern for the welfare of the Kayenta Township and its residents, including the enactment of such ordinances, rules and regulations as it deems in the best interest of the Township.

HISTORY

KTCO-027-98 (Oct. 16, 1998)
KTCAU-34-06 (Aug. 14, 2006)

SECTION 9-104 Definitions

- A. "Asset management system" means a system that is designed for the purposes of leasing, renting, operating and maintaining the leased premises, managing the leased premises and structures affixed to such premises, tracking of inventory and income, and accounting for the rents and fees, property and land related to the leased premises.
- B. "Kayenta Township" means the home rule municipality created by the Navajo Nation Council pursuant to Resolutions CJY-42-03 (July 25, 2003) and CAU-47-03 (Aug. 29, 2003).
- C. "Kayenta Township Commission" means the governing body of the Kayenta Township.
- D. "Lessor" means the Kayenta Township, as the authorized agent of the Navajo Nation, the beneficial owner of all lands within the Kayenta Township, for issuing, approving, processing, administering, managing and enforcing business site leases within the Kayenta Township.
- E. "Navajo Nation" means the Navajo Nation government.
- F. "Regulations" means the Kayenta Township Business Site Leasing Regulations.
- F. "Trust assets" means any property held by the United States in trust for the Navajo Nation.

HISTORY

KTCO-027-98 (Oct. 16, 1998)
KTCD-046-98 (Dec. 20, 1998)
KTCAU-34-06 (Aug. 14, 2006)
KTCF-03-08 (Feb. 12, 2008)

SECTION 9-105 Applicability

- A. This ordinance shall apply to all new business site leases, permits, licenses, and associated rights-of way and easements within the Kayenta Township, except for those related to energy transmission and mineral development.
- B. This ordinance shall govern all new business site leases on previously withdrawn lands, including but not limited to industrial parks, shopping centers, trading post sites and other commercial leases.
- C. This ordinance shall apply to existing business site leases where the current lessee agrees to enter into a novation of the lease, which novation will substitute the Kayenta Township or its wholly owed economic development entity for the Navajo Nation as lessor, but shall not affect the terms and conditions of the Lease.
- D. This ordinance shall apply to all existing business site leases that will expire and are proposed to be renewed where the current lessee agrees to enter into a renewed lease with

the Kayenta Township. Such renewal will substitute the Kayenta Township or its wholly owned economic development entity for the Navajo Nation as the lessor.

HISTORY

KTCO-027-98 (Oct. 16, 1998)
KTCD-046-98 (Dec. 20, 1998)
KTCAU-34-06 (Aug. 14, 2006)
KTCT-03-08 (Feb. 12, 2008)

SECTION 9-106 **Effective Date**

This ordinance shall take effect upon its enactment by the Kayenta Township Commission, provided, however, that such enactment shall not diminish any valid existing rights established prior thereto, including such rights under pre-existing approved leases, permits, licenses, rights-of-way and easements. HISTORY

KTCO-027-98 (Oct. 16, 1998)
KTCAU-34-06 (Aug. 14, 2006)

SECTION 9-107 **Business Site Leasing Regulations**

- A. The Kayenta Township shall promulgate the Kayenta Township Business Site Leasing Regulations consistent with the *Navajo Nation Trust Land Leasing Act of 2000*, 25 U.S.C. § 415(e), as amended, the *Navajo Nation Business Site Lease Leasing Act of 2000*, 5 N.N.C. §§ 2301-2305, as amended, and the *Navajo Nation Business Site Leasing Regulations of 2005*, as amended.
- B. Such Regulations shall consider factors that:
1. Protect and preserve the trust assets from loss, damage, unlawful alienation, waste and depletion;
 2. Provide for an asset management system that promotes the prudent management of the trust assets;
 3. Account for the timely payment, collection, deposit and distribution of income from the trust assets or the reinvestment of income or monies into local economic development activities and projects;
 4. Provide a recordkeeping system of accounting and other operational information of leases;
 5. Establish standards for the negotiation and approval of leases, subleases, assignments, amendments, encumbrances, renewals and cancellations.
 6. Provide for the proper recording of leases;
 7. Provide for an adequate environmental review process;

8. Provide for adequate enforcement measures and appeals process;
9. Provide for other provisions that promote modern leasing practices.

HISTORY

KTCAU-34-06 (Aug. 14, 2006)
KTCF-03-08 (Feb. 12, 2008)

SECTION 9-108 Business Site Leases

- A. A person proposing to lease land shall submit an application for a lease, which shall contain all the necessary information specified by the Kayenta Township Business Site Leasing Regulations and Kayenta Township Business Site Leasing Management Plan.
- B. The Kayenta Township staff shall negotiate the terms and conditions of the proposed lease and ensure that the applicant complies with all requirements of the Kayenta Township Business Site Leasing Regulations and Kayenta Township Business Site Leasing Management Plan. Then, the Kayenta Township staff shall prepare the lease agreement and present it for approval by the Kayenta Township Approving Official.
- C. The standard lease document form developed by the Navajo Nation Division of Economic Development, Navajo Nation Department of Justice and Kayenta Township shall be used for all business site leases of trust lands within the Kayenta Township. The Kayenta Township may approve business site leases that generally conform to the standard lease document form with such modifications as it deems prudent, desirable or necessary, provided that such modified lease documents do not violate the Kayenta Township Business Site Leasing Regulations or any applicable Navajo Nation or federal law or regulations.
- D. Encumbrances of all leaseholds and subleaseholds shall require the consent of the lessor and President of the Navajo Nation, on behalf of the Navajo Nation, unless otherwise specified in the lease.

HISTORY

KTCO-027-98 (Oct. 16, 1998)
KTCAU-34-06 (Aug. 14, 2006)
KTCF-03-08 (Feb. 12, 2008)

SECTION 9-109 Approval, Recording and Dissemination of Leases

- A. Approval of a business site lease will require the following:
 1. Approval of the lease agreement by official documentation of the Approving Official of the Kayenta Township.

2. Signature of the person authorized by the Kayenta Township Approving Official to sign the lease agreement on behalf of the Kayenta Township.
 3. Signature of the President of the Navajo Nation, on behalf of the Navajo Nation.
- B. The lessor shall record all leases, subleases, assignments, amendments, encumbrances, renewals, modifications and cancellations with the Lands Title and Records Office of the Southwest Regional Office of the Bureau of Indian Affairs and the Division of Economic Development of the Navajo Nation.
- B. Copies of all leases, leases, subleases, assignments, amendments, encumbrances, renewals, modifications and cancellations shall be disseminated to appropriate agencies of the Navajo Nation and the Bureau of Indian Affairs as specified in the Regulations.

HISTORY

KTCO-027-98 (Oct. 16, 1998)
KTCD-046-98 (Dec. 20, 1998)
KTCAU-34-06 (Aug. 14, 2006)
KTCT-03-08 (Feb. 12, 2008)

SECTION 9-110 Severability

The provisions of this Ordinance are severable, and if any provision of this Ordinance, or its application to any person or circumstance, is held invalid by a judgment of the courts of the Navajo Nation, such decision shall not affect the validity of the remaining portions of this Ordinance.

HISTORY

KTCAU-34-06 (Aug. 14, 2006)





**KAYENTA TOWNSHIP
BUSINESS SITE LEASING REGULATIONS**

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KAYENTA TOWNSHIP BUSINESS SITE LEASING REGULATIONS

Subchapter 100. General Provisions

Section 9.101. Purposes and Authority

A. The purposes of these regulations are:

1. To carry out the authority of the Kayenta Township for issuing business site leases within the Kayenta Township and to set forth the details for the approving, processing, administering, managing and enforcing such leases.
2. To promote self-determination, encourage economic self-sufficiency and increase business and employment within the Kayenta Township.
3. To promote the uniformity of business site leases within the Kayenta Township.
4. To implement the *Navajo Nation Trust Land Leasing Act of 2000*, 25 U.S.C. § 415(e), as amended, and the *Navajo Nation Business Site Lease Leasing Act of 2000*, 5 N.N.C. §§ 2301-2305, as amended, within the Kayenta Township.
5. To implement the Kayenta Township Business Site Leasing Ordinance, Subchapter 2 of Chapter 9, Lease Ordinance, of the Kayenta Township Code of Ordinances.

B. The *Navajo Nation Business Site Lease Leasing Act of 2000* mandates certain provisions including: provisions to protect and preserve the Navajo Nation trust land, provisions for Navajo Nation control of trust land, provisions for asset management, provisions for trust asset accounting, provisions for record keeping and title recording, and provisions for modern leasing practices. Accordingly, these regulations are consistent with the *Navajo Nation Trust Land Leasing Act of 2000*, 25 U.S.C. § 415(e), as amended, as well as the *Navajo Nation Business Site Lease Leasing Act of 2000*, 5 N.N.C. §§ 2301-2305, as amended, the *Navajo Nation Business Site Leasing Regulations of 2005*, as amended, and the *Navajo Nation Uniform Business Leasing Regulations of 2008*, as amended.

Section 9.102. Title

These regulations shall be referred to the Kayenta Township Business Site Leasing Regulations.

Section 9.103. Definitions

A. For purposes of these regulations:

1. "Approving Entity" means the person or persons established and

authorized by the Kayenta Township Commission to take all necessary and proper action on leases, including but not limited to the approval, amendment, modification, assignment and cancellation of leases, and other related business site leasing documents, on behalf of the Kayenta Township. Such person or persons shall possess qualifications and/or be knowledgeable in real estate, business, finance, planning or related areas and operate within the guidelines established by the Kayenta Township Commission.

2. "Assignment" means an agreement between a lessee and an assignee whereby the assignee acquires all of the lessee's rights and assumes all of the lessee's obligations under a lease.

3. "Best interest of the Kayenta Township" means the balancing of interests in attaining the highest economic income, providing incentives to increase economic development, preserving and enhancing the value of Navajo Nation trust lands within the Kayenta Township, and increasing business and employment opportunities within the Kayenta Township.

4. "BIA" means the Bureau of Indian Affairs, United States Department of the Interior.

5. "Bond" means a security interest providing security for the performance of a duty or the payment of a debt. The bond can be furnished by the lessee or a third party surety.

6. "Business site lease" means any lease issued upon Navajo Nation trust lands for business purposes within the Kayenta Township.

7. "Change in land use" means the change from residential to non-residential, commercial to industrial, or one use to another that significantly differs from the former use.

8. "Development period" means the period of time beginning from the date the lease is executed to a certain later date determined by the Township, not to exceed 4 years, during which period of time rent is waived or abated.

9. "Environmental Reviewer" means the employee of the Kayenta Township or an independent contractor with the authority set forth in Section 711 hereof.

10. "Environmental Review Process" means the process that considers all of the documents relevant to an environmental review for a Leasing Decision, for which the Environmental Reviewer shall maintain a written record ("Environmental Review Record").

11. "Executing Official" means the Navajo Nation President authorized to take all final necessary and proper action on leases, including the approval, amendment, modification, assignment and cancellation of leases, and other related business site leasing documents, within the Kayenta Township, on behalf of the Navajo Nation.

12. "Equity" means the value of a business or property over and above the

indebtedness against it, and includes all tangible and intangible assets including capital stock, options, franchises, trademarks, patents, copyrights, goodwill, contracts, facilities, infrastructure and equipment.

13. "Fair annual lease value" means the most probable dollar amount a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement, including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the lessee and lessor each acting prudently and knowledgeably; and assuming consummation of a lease contract as of a specified date and the passing of the leasehold from lessor to lessee under conditions, whereby:

- a. The lessee and lessor are typically motivated;
- b. Both parties are well informed or well advised, and acting in what they consider are their best interests;
- c. A reasonable time is allowed for exposure in the open market;
- d. The rent payment is made in terms of cash in United States dollars and is expressed as an amount per time period consistent with the payment schedule of the lease agreement; and
- e. The rental amount represents the normal consideration for the property lease unaffected by special fees or concessions granted by anyone associated with the transaction.

14. "Interested party" means the lessee or a person whose interest is adversely affected by the lessor's leasing decision.

15. "Kayenta Township" means the home rule municipality created by the Navajo Nation Council pursuant to Resolutions CJY-42-03 (July 25, 2003) and CAU-47-03 (Aug. 29, 2003).

16. "Kayenta Township Commission" means the governing body of the Kayenta Township.

17. "Lease" means a written agreement or contract between the lessor and a lessee, wherein the lessee is granted the right to possess Navajo Nation trust land for a specific purpose and duration. Pursuant to 5 N.N.C. § 2303(F), a "Lease" also means a business site lease, permit or license granted for land use privileges in Navajo Nation trust land for business purposes. The written agreement transfers the rights to use and occupy land or structures from the owner to another for a specified period of time in return for a specified rent.

18. "Leasing Decision" means any official decision made by the Kayenta Township regarding a lease or sublease.

19. "Lessee" means a person to whom property is leased under a lease and the one who has the right to use or occupy a property under a lease agreement.

20. "Lessor" means the Kayenta Township.

21. "Master Lease" means a controlling lease for a tract of land by which all subsequent subleases are governed.

22. "Mortgage" means a written instrument that creates a lien upon real estate encumbered in a business site lease as security for the payment of a specific debt.

23. "Navajo Nation" means the Navajo Nation Government.

24. "Navajo Nation law" the body of law governing the land and activities occurring within the jurisdiction of the Navajo Nation.

25. "Navajo Nation trust land" means the surface estate of land or any interest therein held by the United States in trust for the Navajo Nation; land held by the Navajo Nation and subject to federal restrictions against alienation or encumbrance; and land held by the United States in trust for a Navajo Nation corporation chartered under Section 17 of the Indian Reorganization Act.

26. "OST" means the Office of the Special Trustee for American Indians within the United States Department of the Interior.

27. "Permit" means a written agreement between the Lessor and the applicant for a permit, also referred to as a permittee, where the permittee is granted a revocable use privilege to use Navajo Nation trust land for a specified purpose and a specified time.

28. "Petition" means the submission, after exhaustion of tribal remedies, of a written request to the Secretary for review of the compliance of these regulations by the Kayenta Township.

29. "Secretary" means the Secretary of the United States Department of the Interior or his or her authorized representative.

30. "Sublease" means a written agreement by which the lessee grants a person a right of possession no greater than that held by the lessee under a lease.

31. "Surety" means one who guarantees the performance of another.

32. "Title Plant" means the Land Title and Records Office of the BIA Southwest Regional Office, where leases, subleases, assignments, amendments, encumbrances, renewals, modifications and cancellations are recorded and where title searches can be conducted.

33. "Trespass" means to occupy or use a business site without authorization from the lessor.

Section 9.104. Scope

A. These regulations govern all existing and future business site leases within the Kayenta Township, approved under authority of 25 U.S.C. § 415, as amended, and the *Navajo Nation Business Site Leasing Regulations of 2005*, as amended, and to all actions and decisions taken in connection with those leases. Nothing herein shall be construed to effect the terms and conditions of existing leases.

B. Business site leases are mandatory for all businesses operating from a permanent structure or fixed location, which are advertising themselves as being open to the public, or collecting rent or money from vendors or other business activities, unless otherwise provided by law. Failure to comply with this section shall be addressed pursuant to Navajo Nation law.

Section 9.105. Effective Date

These regulations shall take effect upon approval by the Kayenta Township Commission and the appropriate entity of the Navajo Nation.

Section 9.106. Approval

The lessor may grant a business site lease or permit approved by the Approving Official and/or Executing Official, so long as the lessee complies with these regulations and the granting of the lease or permit is in the best interest of the Kayenta Township.

Section 9.107. Choice of Law

All disputes over leases shall be resolved under the laws of the Navajo Nation. Nothing in these regulations shall be construed to waive the sovereign immunity of the Kayenta Township, Kayenta Township Commission or the Navajo Nation.

Section 9.108. Duration and Renewal

No lease shall be approved for more than twelve (12) months prior to the commencement of the term of a lease. The term of a lease shall not exceed twenty-five (25) years, except that any such lease may include an option or options to renew, for up to two (2) additional terms, each of which may not exceed twenty-five (25) years. The lessee shall notify the lessor of its intent to renew, at least one (1) year before the lease is due to expire.

Subchapter 200. Obtaining a Business Site Lease

Section 9.201. Information

Information on obtaining a business site lease shall be available at the Kayenta Township office.

Section 9.202. Supporting Documents

All applicants for a lease shall submit the following documents to the Kayenta Township: (1) site survey with a legal description; (2) environmental review, if applicable; (3) organizational documents; (4) financial statements; and (5) other documents as may be required by the lessor.

Section 9.203. Records

A. The lessor shall ensure that all business site leases, subleases, assignments, amendments, encumbrances, renewals, modifications and cancellations are recorded with the following:

Lands Title and Records Office
Southwest Regional Office
Bureau of Indian Affairs
P. O. Box 26567
Albuquerque, NM 87125-6567

B. The lessor is responsible for disseminating recorded lease documents as follows:

Navajo Nation Division of Economic Development
Navajo Nation Office of the Controller
Navajo Nation Land Department
Navajo Nation Records Management Department
Lessee

C. A copy of all leases, subleases, assignments, amendments, encumbrances, renewals, modifications and cancellations shall also be sent for information purposes only to the Bureau of Indian Affairs, Navajo Regional Office and the Western Navajo Agency.

Section 9.204. Ownership of Records

Records of activities taken pursuant to these regulations are the property of the United States, the Navajo Nation and Kayenta Township. Records compiled, developed or received by the lessor in the course of business with the Secretary are the property of the Navajo Nation and Kayenta Township.

Subchapter 300. Business Site Lease Requirements

Section 9.301. Terms and Conditions

Leases shall be governed by the standard terms and conditions set forth in the Kayenta Township Standard Business Site Lease Form, or equivalent document. The standard terms and conditions may only be modified with the approval of the management of the Kayenta Township, provided such modification is consistent with these regulations, the *Kayenta Township Business Site Leasing Ordinance*, as amended, and *Navajo Nation Business Site Leasing Regulations of 2005*, as amended, and the *Navajo Nation Uniform Business Site Leasing Regulations of 2008*, as amended. The lessee is responsible for understanding the terms and conditions of the lease.

Section 9.302. Land Description

All leases shall contain an adequate site survey with a legal description based on metes and bounds, rectangular, or lot and block system.

Section 9.303. Appraisal; Local Studies

A. The fair annual lease value shall be determined by an appraisal equivalent procedure, such as a market study or market analysis, performed by the lessor utilizing the following available data: improvement cost, replacement cost, earning capacity, sale and lease data of comparable sites. A log detailing the methods of appraisal or equivalent procedure and approximate value of trust land shall be attached to the business site lease. If a market study is utilized, it shall be one conducted for the entire Township that includes the proposed leased premises. Such market study shall be updated every five years. If a market analysis is used, it shall be conducted for only the proposed lease premises.

B. Alternatively, the fair annual lease value shall be determined by an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or commonly accepted method of appraisal. An appraisal log describing the method of appraisal and value of land shall be attached to the business site lease.

C. For the first year these regulations are in effect, the appraisal or equivalent procedure shall be submitted to the OST's Navajo Region, Branch of Appraisal, for a determination as to whether the appraisal meets the requirement of these regulations. If the Branch fails to make a determination within fifteen (15) days of receipt of the appraisal or equivalent procedure, the appraisal or equivalent procedure shall be deemed proper. After the first year, the lessor may obtain technical assistance from OST's Appraisal Office.

Section 9.304. Environmental Review

The lessor shall not approve a lease until the proposed business site lessee has completed the environmental review process pursuant to Subchapter 700, if applicable. Leases issued that are not in compliance with this section shall be null and void.

Section 9.305. Fair Annual Lease Value

A. No lease shall be approved for less than the fair annual lease value as set forth in the appraisal or equivalent procedure, except as follows:

1. If a lessee is in the development period;
2. The lessor is providing an incentive for a business to locate within the Kayenta Township and must provide lease concessions, lease improvement credits or lease abatements to attract such business; or
3. The lessor determines such action is in the best interest of the Kayenta Township.

B. The fair annual lease value of a lease may be structured:

1. On a flat rate;
2. On a percentage of gross receipts; or
3. On a flat rate plus a percentage of gross receipts, if the lessee is a business located in a shopping center or generates over \$1 million per year of gross receipts.

C. The lease shall provide for periodic review at least every five (5) years and the lease rate may be adjusted if necessary. Such review shall give consideration to the economic conditions, exclusive of improvement or development required by the lease agreement or the contribution value of such improvements.

D. If a lease contains an adjustment provision, it shall specify how adjustments will be made, who will make the adjustments, when the adjustments will be effective, and how disputes over adjustments will be resolved.

E. A lease shall be amended if a lease rate adjustment is necessary.

F. The lessor shall keep written records of the basis used in determining the fair annual lease value, as well as the basis for adjustments. These records shall be presented to the lessee for review and the record of acceptance or non acceptance shall be included in the lease file.

Section 9.306. Bond

A. The lessee shall obtain a satisfactory bond (or bonds) in an amount that reasonably assures performance on the lease. Such bond(s) shall be for the purpose of guaranteeing:

1. The lease payments;
2. The estimated cost of development and improvements; and/or
3. Any additional amount necessary to ensure compliance with the lease.

B. The lessor may waive the bond requirement or reduce the bond amount if such waiver or reduction is in the best interest of the Kayenta Township. The lessor shall maintain written records of all waivers or reductions of the bond.

Section 9.307. Insurance

The lessee shall secure insurance from a nationally accredited insurance company with a financial strength rating of "A" or equivalent and authorized to do business in the state where the leased premise is located. The insurance policies shall cover property liability, casualty and business interruption. The amounts shall be sufficient to cover the improvements, personal injury or death, and any loss of the lessee, lessor, Navajo Nation and United States. The insurance shall expressly identify the lessor, Navajo Nation and United States as additional insured parties.

Section 9.308. Improvements

A. Improvements placed on the leased premises shall become the property of the lessor upon termination or expiration of the lease, unless otherwise provided for in the lease. If improvements will be removed, the lease shall specify the maximum time allowed for such removal.

B. A lessee may develop equity value in the improvements and sell its interest in the lease based on such equity value. The lessor has a right of first refusal to purchase such interest.

C. The lease may provide that at expiration, cancellation or termination of the lease, the lessor shall purchase the improvements to the premises at fair market value.

Section 9.309. Subleases, Assignments, Amendments and Encumbrances

A. Subleases, assignments or amendments of any lease and encumbrances of any leasehold interest shall have the written consent of the lessor and lessee, as well as the sureties, if any.

B. The lease may authorize subleases, in whole or in part, without further approval of the lessor or the Executing Official, provided a copy of the sublease is provided to the lessor and the sublease complies with these regulations. This in no way relieves the parties from carrying out their duties under the lease.

C. A Master Lease may authorize subleases, in part, without further approval by the lessor, provided a copy of the sublease is provided to the lessor and the sublease complies with

the terms and conditions of the Master Lease and these regulations. This in no way relieves the parties from carrying out their duties under the lease.

D. The lease may authorize encumbrances of the leasehold interest for the purpose of securing a loan or line of credit to develop and improve the premises or operate the business of the lessee. Approval of the encumbrance by the lessor and the Navajo Nation is required. If a sale or foreclosure occurs and the encumbrancer is the purchaser, the encumbrancer may assign the lease without the approval of the lessee, lessor or the Navajo Nation, provided the assignee agrees in writing to be bound by all the terms and conditions of the lease. If the purchaser is a party other than the encumbrancer, approval by the lessor and Navajo Nation is required, provided the purchaser agrees in writing to be bound by all the terms and conditions of the lease.

Subchapter 400. Business Site Lease Management

Section 9.401. Management

A. The lessor shall manage business site leases located within the boundaries of the Kayenta Township issued pursuant to these regulations.

B. The lessor shall institute a business site leasing management plan that employs sound real estate management practices and addresses accounting, collection, monitoring, enforcement, relief, remedies, etc.

C. The lessor shall also manage leases executed prior to the effective date of these regulations, but only if the lessee executes a consent agreement in writing.

D. The lessor shall also manage leases executed prior to the creation of the Kayenta Township, but only if the lessee executes a consent agreement in writing.

Section 9.402. Accounting

A. The lessor shall implement an accounting system that generates invoices in advance of due dates, accounts for payments, and dates of when lease rate and other adjustments should be made.

B. The system shall include the following information for each lease: name of the lessee, business site lease number, due dates, amounts due, payments made, late charges, collection efforts, cancellation efforts, balance due, cumulative payments and cumulative balance due.

C. The lessor shall provide an annual accounting of each lease to the Navajo Nation Office of the Controller and the Secretary. The lessor shall also provide a written annual financial report of the status of all leases to the Navajo Nation.

D. Nothing in this section shall be construed to absolve the lessee of its duties under a lease.

Section 9.403. Administrative Fees

The lessor may charge administrative fees for costs associated with issuing a lease, sublease, assignment, amendment, mortgage or other administrative transaction involving a lease.

Subchapter 500. Enforcement

Section 9.501. Enforcement

A. The lessor shall have all powers necessary and proper to enforce the lease terms, laws, ordinances, regulations, rules, policies and covenants, consistent with the business site leasing management plans. This includes the power to enter the premise at reasonable times, with or without notice, and assess penalties for late payments and other violations of the lease.

B. The lessor may request the Navajo Nation's Office of the Attorney General to assist in the enforcement of leases and these regulations.

Section 9.502. Defaults

A. If the lessor determines that the lessee is in default, the lessor shall send the lessee a notice of default within a reasonable time after such determination. The notice of default may be provided by personal delivery or certified mail, return receipt requested.

- B. Within ten (10) days of the personal delivery or mailing, the lessee shall:
1. Cure the default and notify the lessor in writing that the default has been cured;
 2. Dispute the lessor's determination that the lease is in default and explain why the lease should not be canceled; or
 3. Request additional time to cure the default.

C. If the lessee wishes to dispute the lessor's determination that the lease is in default, the lessee must do so consistent with the appeal provisions described in Subchapter 600.

Section 9.503. Remedies

- A. If the lessee fails to cure the default within the prescribed time period, the lessor may:
1. Cancel the lease pursuant to these regulations;
 2. Grant an extension of time to cure the default;

3. Pursue other remedies, including the execution of the bonds or collection of the insurance proceeds;

4. Pursue any combination of remedies listed above; or

5. Pursue any other remedy set forth in the business site lease management plan.

B. If the lessor cancels the lease, the lessor shall send the lessee a cancellation letter within a reasonable period of time. The cancellation letter shall be hand delivered or sent to the lessee by certified mail, return receipt requested. The cancellation letter shall:

1. Explain the reason(s) for cancellation;

2. Notify the lessee of any unpaid amounts, interest charges, or late payment penalties due under the lease;

3. Notify the lessee of its rights to appeal; and

4. Order the lessee to vacate the leased premises within thirty (30) days of the personal delivery or mailing date of the cancellation letter, if an appeal is not filed by such time.

C. A cancellation shall become effective thirty one (31) days after personal delivery or mailing date of the cancellation letter. The filing of an appeal shall not change the effective date of a cancellation. Pending the outcome of an appeal, the lessee shall make all requisite payments, as well as comply with the terms of the lease.

D. If the lessor decides to grant an extension of time to cure the default, the lessee shall proceed diligently to perform and complete the corrective actions within a reasonable period of time. The lessee shall notify the lessor in writing that the default has been cured on or before the expiration of the extension of time.

Section 9.504. Penalties

The lease shall specify the rate of interest to be charged if the lessee fails to make payments in a timely manner. The lease shall identify any additional late payment penalties. Unless the lease provides otherwise, interest charges and late payment penalties shall apply in the absence of any specific notice to the lessee from the lessor, and the failure to pay such amounts shall be treated as a breach of the lease.

Section 9.505. Harmful or Threatening Activities

If a lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes criminal activity thereon, the lessor or the Navajo Nation may take

appropriate emergency action, including, but not limited, to judicial relief.

Section 9.506. Holdover

If the lessee remains in possession after the cancellation or expiration of a lease, the lessor shall treat such occupation as a trespass. The lessor shall take action to recover possession and pursue additional remedies. Filing of any action shall be pursuant to Navajo Nation laws, or the lessor may request the Navajo Nation and/or Bureau of Indian Affairs for resolution under Navajo Nation and/or federal laws; such request shall be in writing by certified mail, return receipt requested.

Section 9.507. Trespass

If a person occupies or uses the premises or a business site without the lessor's approval, the lessor may pursue appropriate remedies, including, but not limited to, the filing of a trespass action to regain possession under Navajo Nation law.

Subchapter 600. Appeals

Section 9.601. Appeals

A. The interested party may appeal the determination of the lessor within ten (10) days of the determination. Appeals may be filed with the Navajo Nation's Office of Hearings and Appeals ("OHA") or other hearing body as set forth in the business site lease management plans. Such appeals shall be effectuated by filing an appeal bond where a stay of enforcement is requested, a written notice setting forth the basis for appeal, a short statement indicating the nature and circumstances of the appeal, and a short statement indicating the remedy being sought.

B. An appeal bond shall be posted to protect the party whose remedy has been stayed from all financial losses that may occur as a result of the appeal. Appeal bond requirements shall not be subject to a separate appeal, but may be contested during the cancellation appeal.

C. The OHA or other hearing body shall review whether the determination by lessor was arbitrary, capricious or an abuse of discretion; not supported by substantial evidence in the record; or otherwise not in accordance with the law. The OHA or other hearing body shall issue its written decision within thirty (30) days of filing of the appeal or hearing the appeal, whichever is later.

Section 9.602. Appeals to the Navajo Nation Supreme Court

Decisions of the OHA or other hearing body may be appealed to the Navajo Nation Supreme Court. Review shall be limited to issues of law and the record. *De novo* review is not allowed.

Section 9.603. Appeals to the Secretary

If an interested party is adversely affected by decision of the lessor in violation of these regulations, the interested party may, after exhaustion of tribal remedies, appeal the decision to the Secretary.

Subchapter 700. Environmental Review Process

Section 9.701. Introduction

The Kayenta Township has conducted an Environmental Assessment on April 1, 1999, for which the BIA determined there was "A Finding of No Significant Impact" on July 21, 1999, and Archeological Clearances on July 17, 1987, September 8, 1987 and October 20, 1987, for all lands located within the boundaries of the Kayenta Township. The Environmental Reviewer shall consider these documents in determining whether a Leasing Decision would be subject to the Environmental Review Process of this Subchapter.

Section 9.702. Threshold Determination

A. Lessees Not Subject to Environmental Review Process: If the Environmental Reviewer determines that the Leasing Decision by its nature would not affect the biological and cultural resources of the Navajo Nation and Township, the Leasing Decision is exempt from additional requirements of the Environmental Review Process, subject to the environmental record requirements of Section 710.

B. Lessees Subject to Environmental Review Process: If the Environmental Reviewer determines that the Leasing Decision might be expected to i) impact, ii) alter, iii) disturb, or iv) otherwise cause physical disturbances to the biological or cultural resources of the Navajo Nation and Township, the lessee must fulfill the requirements of the Environmental Review Process. The physical disturbances must be direct, such as land clearing, new building construction, or discharge of emission or effluent associated with the project.

Section 9.703. Action on Leasing Decision Subject to Completion of Environmental Review Process

If the Environmental Reviewer determines that the Leasing Decision is subject to the Environmental Review Process ("ER Process"), the Township should not consider the Leasing Decision until the Environmental Reviewer closes the ER Process in accordance with Section 712.

Section 9.704. Lessee Responsible for Environmental Compliance Determination

A. The lessee, as the entity that will occupy and operate a business on the leased land, is primarily responsible for compliance review, decision-making and action in accordance with applicable environmental laws. Therefore, pursuant to this Subchapter, the lessee must

provide the Environmental Reviewer a determination of the Leasing Decision's compliance with respect to each of the environmental laws listed below ("Compliance Determination"):

1. National Historic Preservation Act
2. Floodplain Management
3. Wetlands Protection
4. Endangered Species Act
5. Air Quality
6. Sole Source Aquifer
7. Abandoned Mine Lands
8. Navajo Nation's Solid Waste Act
9. Farmland Protection Policy Act
10. Noise Abatement and Control
11. Toxic or Hazardous Substances and Radioactive Materials

B. Lessee's responsibility to comply with the above laws is in addition to and separate from its obligations under this Subchapter, and lessee's compliance obligations under such laws are not extinguished upon complying with the ER Process.

C. Lessee's obligation to provide a Compliance Determination is not complete until the Environmental Reviewer, in accordance with Section 707, has determined that the lessee has completed the Compliance Determination process.

Section 9.705. Compliance Determinations

A. The lessee may request a Compliance Determination from the appropriate Navajo Nation and Kayenta Township departments ("Departments") in accordance with Section 713, and for providing such Departments with the information that may be required to make the Compliance Determination.

B. The Compliance Determination must clearly describe the Leasing Decision under consideration, and provide an evaluation of the Leasing Decision's impact on the resource or condition regulated by the particular environmental law for which the lessee requests a Compliance Determination.

C. The Compliance Determination must also include a finding by the relevant Department as to whether the Leasing Decision will comply with the particular environmental law. This finding must be signed by the individual who is officially responsible for determining a project's impact on the resources or conditions regulated by that particular law.

D. A Department's completion of the Compliance Determination will be timely if the Environmental Reviewer receives the Compliance Determination within twenty (20) working days after the latter of the following two events: 1) the Department's receipt of lessee's request for a Compliance Determination or 2) the Department's receipt of information required to complete the Compliance Determination.

E. If the Environmental Reviewer does not receive a completed Compliance Determination in a timely manner from a Department, the Environmental Reviewer may conclude the ER Process without that Department's determination, provided the Environmental Reviewer documents the following conditions:

1. The Environmental Reviewer has made reasonable efforts to obtain the Compliance Determination from the appropriate Department; and
2. The delay is not the fault of the lessee.

Section 9.706. Compliance Determinations in Earlier or Concurrent Environmental Review Documents

A. If the Leasing Decision pertains to an existing lease that has undergone an previous environmental review pursuant to the Township's Business Site Leasing Ordinance or Regulations or the National Environmental Policy Act ("NEPA"), the lessee may use those earlier environmental review documents to meet its Compliance Determination obligations under this Subchapter, subject to the Environmental Reviewer's determination in Section 707 that the Compliance Determination adequately evaluates the impacts of the Leasing Decision.

B. As early in the ER Process as possible, the Environmental Reviewer should review the earlier environmental review documents and assess whether the Compliance Determination in those documents sufficiently evaluate the impacts of the Leasing Decision. If disturbances associated with the Leasing Decision were not addressed or evaluated by the Compliance Document, the lessee must obtain a compliance update or amendment from the Department that has regulatory responsibility for the resource that was not adequately evaluated.

C. In the event a federal agency requires the lessee to conduct an environmental review under NEPA in connection with a federal decision that is related to the Leasing Decision, the Environmental Reviewer may use those NEPA documents, provided the documents meet the requirements of this Subchapter.

Section 9.707. Determination That Lessee Has Completed the Compliance Determination Process

A. Before the Environmental Reviewer may close the ER Process, he must affirmatively find the following:

1. The lessee has fully complied with the requirements of Sections 704 and 705;
2. The lessee has submitted all Compliance Determinations required by this Subchapter; and
3. The Compliance Determinations adequately evaluate the impacts expected from the Leasing Decision.

B. Upon making these findings, the Environmental Reviewer will place in the Environmental Review Record ("ER Record") a statement to the effect that lessee has completed the Compliance Determination process.

Section 9.708. Compliance Determination Summary

A. After the Environmental Reviewer certifies that the lessee has completed the Compliance Determination process, the Environmental Reviewer will prepare a summary of the compliance findings. The summary will contain the following information:

1. The date of the Compliance Determination and the identification of the source of the Compliance Determination, if contained in an earlier environmental review;

2. A summary of each Department's compliance determination for each applicable law, including conditions of compliance, if any; and

3. A copy of the Compliance Determination.

B. The summary will be signed and dated by the Environmental Reviewer, and the document will be included in the ER Record.

Section 9.709. Public Notice Requirements

A. The Environmental Reviewer may, if necessary, publish in a general circulation newspaper a notice of the Township's intent to certify that a lessee has completed the ER Process of the Township's business site leasing program.

B. The public notice must provide for a comment period and state that public comments timely received will be considered before the Environmental Reviewer closes the ER Process. The Notice must also provide information about the ER Record and inform the public how the record may be reviewed.

Section 9.710. Environmental Review Record

A. An ER Record must be maintained for every Leasing Decision reviewed by the Environmental Reviewer, including Leasing Decisions the Environmental Reviewer finds to be exempt pursuant to Section 702(a). The ER Record must be maintained in a written format and available for public review.

B. The ER Record must contain all documents relevant to the ER Process, including but not limited to, the following:

1. Determinations (in writing) made by the Environmental Reviewer pursuant to this Subchapter;

2. Correspondence with lessee and government agencies;
3. Compliance Determinations including source documents and supporting documents;
4. The Compliance Determination Summary;
5. Public notices, if any; and
6. Public comments, if any.

Section 9.711. Environmental Reviewer's Authorities and Duties

A. The Environmental Reviewer will maintain an ER Record in which all documents relevant to the ER Process for a particular Leasing Decision.

B. The Environmental Reviewer has the authority to carry out all the acts that are committed to their discretion in this Subpart.

C. The Environmental Reviewer may act as lessee's agent for the purposes of assisting the lessee to complete the requirements of this Subchapter.

D. The Environmental Reviewer has authority under this Subchapter to establish procedures aimed at expediting the Compliance Determination process. The Environmental Reviewer is required to consult with the relevant Departments in the development and implementation of any such procedures.

Section 9.712. Environmental Reviewer's Closure Procedures

A. Upon determining the following, the Environmental Reviewer will conclude the ER Process, whereupon the Environmental Reviewer will transfer the ER Record to the Approving Entity:

1. The ER Record contains all documents required by Section 710;
2. The public comment period has passed, if applicable;
3. The lessee has complied with all requirements of this Subchapter.

Section 9.713. Environmental Reviewer Required to Consult with Appropriate Departments

Upon the final approval of these regulations, the Environmental Reviewer will consult with the relevant Navajo Nation Departments, and determine which Department will be responsible for making the compliance finding referenced in Section 705 for each of the environmental laws referenced in Section 704.

Subchapter 800. Amendments; Severability

Section 9.801. Amendments

The management of the Kayenta Township may amend these regulations, provided the amendments are consistent with the *Navajo Nation Trust Land Leasing Act of 2000*, 25 U.S.C. § 415(e), the *Navajo Nation Business Site Lease Leasing Act of 2000*, 5 N.N.C. §§ 2301-2305, and *Navajo Nation Business Site Leasing Regulations of 2005* and *Kayenta Township Business Site Leasing Ordinance*.

Section 9.802. Severability

If a court of competent jurisdiction determines that a portion of these regulations is invalid, void or unenforceable, the remainder shall remain in full force and effect without regard to the stricken portion.

Original: August 14, 2006 (Resolution KTCAU-34-06)
Amended: July 9, 2007 (Resolution KTCJY-26-07)
Amended: Feb. 12, 2008 (Resolution KTCF-03-08)
Amended: July 7, 2008 (Administrative Amendments)